

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94-222

In the Matter of)
)
Inquiry into alleged abuses of) GN Docket No. 94-96
the Commission's auction)
processes by applicants for)
licenses in the Interactive)
Video and Data Services)

ORDER

Adopted: August 25, 1994

Released: August 30, 1994

By the Commission:

1. On July 28 and 29, 1994, the Commission conducted auctions for the award of 594 licenses in the Interactive Video and Data Service ("IVDS"). In promulgating rules for the award of these licenses, the Commission adopted special measures to create opportunities for small businesses and businesses owned by minorities and women to participate in the provision of IVDS.¹ The Commission adopted these measures to fulfill its Congressional mandate to promote the wide dissemination of licenses awarded by auction (47 U.S.C. § 309(j)(3)(B)), and, in particular, to ensure that small businesses and businesses owned by minorities and women have opportunities to participate in the provision of certain spectrum-based services (47 U.S.C. § 309(j)(4)(D)).²

2. In adopting rules to govern the IVDS auctions, the Commission announced that it would be vigilant to ensure the integrity of the auction process and to prevent abuses of the auction rules, particularly those measures adopted to provide opportunities for small businesses and businesses owned by minorities and women.³ The Commission warned that "if an applicant for designated entity status proves unqualified, and the Commission determines that the application for designated entity status involved willful misrepresentation or other serious misconduct, the

¹ Fourth Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2330 (1994) (petitions for reconsideration pending) ("Fourth Report and Order").

² Small businesses and businesses owned by minorities and women are among the categories of companies referred to as "designated entities." See Fourth Report and Order, *supra*, at ¶¶ 34-54.

³ See Second Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2348, 2397 ¶ 278 (1994) ("Second Report and Order").

Commission will impose severe penalties. These may include monetary forfeitures, revocation of licenses, and prohibition of participation in future auctions."⁴ The Commission announced that it would conduct audits of participants in the auctions to monitor conduct by applicants and to foster compliance with the auction rules.⁵

3. The Commission also determined that "it is critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses or default on a balance due."⁶ The Commission concluded that penalties for payment defaults would deter speculative bidding, thereby protecting the auction process and expediting service to the public. Accordingly, the Commission's rules provide that winning bidders who default in making a down payment may forfeit their upfront payments and may be assessed additional monetary penalties.⁷ The Commission further determined that "if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission may also declare the applicant and its principals ineligible to bid in future auctions, and may take other action that it may deem necessary, including institution of proceedings to revoke any existing licenses held by the applicant."⁸

4. It has come to the Commission's attention that one or more bidders in the recent IVDS auctions may have misrepresented their status as designated entities, in violation of the Commission's rules. In addition, one or more winning bidders may have failed timely to tender their down payments under circumstances which may involve gross misconduct, misrepresentation or bad faith. Moreover, one or more bidders may have encouraged other winning bidders to default in making down payments in an apparent attempt to undermine and abuse the Commission's auction

⁴ Second Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-215, released August 15, 1994, at ¶ 136; see also Second Report and Order, supra, at ¶ 198, Fourth Report and Order, supra, at ¶ 28.

⁵ Second Report and Order, supra, at ¶ 259.

⁶ Second Report and Order, supra, at ¶ 197; Fourth Report and Order, supra, at ¶ 28.

⁷ Second Report and Order, supra, at ¶ 197; Fourth Report and Order, supra, at ¶ 29.

⁸ Second Report and Order, supra, at ¶ 198; Fourth Report and Order, supra, at ¶ 28.

processes.

5. In view of the foregoing, the Commission believes that it is in the public interest to initiate an investigation of the conduct of applicants in the IVDS auctions conducted July 28 and 29, 1994, to determine whether such misconduct has occurred. The investigation shall be conducted pursuant to Section 403 of the Communications Act of 1934, as amended, 47 U.S.C. § 403.

6. ACCORDINGLY, IT IS ORDERED, that, pursuant to Section 5(c)(1) of the Communications Act of 1934, as amended, for the purpose of this inquiry authority is hereby delegated to the Chief Administrative Law Judge of the Commission to require by subpoena the production of books, papers, correspondence, memoranda and other records deemed relevant to this inquiry; to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence; and to perform such other duties in connection therewith as may be necessary or appropriate to the compilation of a complete record concerning the subject matter of this inquiry.

7. IT IS FURTHER ORDERED, that the Chief Administrative Law Judge is specifically authorized to designate a Commission Administrative Law Judge to exercise the authority conferred by this Order, and to require witnesses to testify and produce evidence under authority of, and in the manner provided in, Section 409 of the Communications Act of 1934, as amended, when requested to do so by Commission Counsel.

8. IT IS FURTHER ORDERED, that the subpoena power delegated by the Order shall be exercised in accordance with Sections 1.331 through 1.340 of the Commission's Rules. Motions to quash or limit subpoena shall be directed to the presiding Administrative Law Judge in accordance with Section 1.334 of the Rules.

9. IT IS FURTHER ORDERED, that the provisions of Section 1.27 of the Commission's Rules shall apply to the production of oral and documentary evidence under subpoena.

10. IT IS FURTHER ORDERED, that the investigation conducted pursuant to 47 U.S.C. § 403 shall be non-public and the investigatory record shall be kept non-public until the Commission shall order otherwise.

11. IT IS FURTHER ORDERED, that the presiding Administrative Law Judge may convene sessions at such places as may be deemed necessary for the further conduct of this inquiry.

12. IT IS FURTHER ORDERED, that the presiding Administrative Law Judge is directed to complete the investigation as expeditiously as possible so that a final report can be promptly submitted to the Commission for such further action as the Commission may deem appropriate.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
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Acting Secretary